

REMARKS

Claims 1-26 are pending in the instant application and stand rejected. Reconsideration is respectfully requested in light of the amendments and the remarks contained herein.

Claim Rejections 35 U.S.C. § 112

Claims 1-17 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully traverses the rejections.

The office rejected claims 1-17 as omitting essential steps. Particularly, the office alleges that it is unclear how the collected information is used in the calculations and how the calculations are tied together and what they are used for, and the claims failed to meet the scope of the preamble.

Claim 1 recites a method for *evaluating* potential sales and business opportunities *by calculating metrics* that include a projected tire sales for the automotive center. As recited by claim 1, the collected data, such as an average number of repair order requests per time period, a number of days the service center is open per time period, and identification of one or more carlines serviced, are used in calculating the maximum expected number. The maximum expected number is then used to determine a tire sales goal. The tire sales goal is then used in calculating the projected tire sales for the automotive service center. Thus, it is clear that the collected information is used in the calculations and how the calculations are tied together. The calculations yield the projected tire sales for the automotive center for evaluating potential sales and business opportunities which clearly meets the scope of the preamble.

The office asserts that “the sales goal is based on the maximum but the maximum is not used to determine it.” This statement is confusing because as the office admits that the sales goal

is “based on” the maximum, logically the maximum must be “used to determine” the sales goal. The office further alleges that there is no guidance as to how to chose the sales goal based on the maximum. Paragraphs [0037]-[0039] of the instant application disclose as examples different ways to determine a tire sales goal. Even though the scope of claim 1 is broad, breadth of a claim is not to be equated with indefiniteness. MPEP 2173.04 (citing *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971)). It is respectfully submitted that claim 1 does not omit any essential steps. Thus, it is respectfully requested the § 112 rejection of claim 1 be withdrawn.

Claim 12 recites similar features as claim 1. For similar reasoning as given for claim 1, it is respectfully requested that the § 112 rejection of claim 12 be withdrawn.

Claims 3 and 13 are rejected for being indefinite as to how the new data changes the limitations in the associated independent claims and how the new data are used in the calculation. Claims 3 and 13 are amended to clarify. The amended claims 3 and 13 recite an additional calculating. It is clear that the new data, an employee pay rate, is used together with the calculated projected tire sales recited in the associated independent claims in a calculation to calculate a net profit. In light of these clarification amendments, it is respectfully requested that the § 112 rejections of claim 3 and 13 be withdrawn.

Claims 6, 8, 15 and 17 are rejected for being indefinite as to how the recited calculations tie to the limitations of the claims from which they depend and how the variables are used in the calculation. These claims already include an additional calculating step which includes concrete details as to how the variables are used in the calculation. Thus, it is respectfully requested that the § 112 rejection of claim 6, 8, 15, and 17 be withdrawn.

Claims 10 and 11 are rejected for being indefinite based on their usage of the terms warranty factor and loyalty variable, respectively. It is respectfully submitted that the warranty

factor is described in detail in paragraph [0065], and the loyalty variable is described in detail in paragraph [0068]. These portions of the specification clearly define the terms, their determination, and example values. In light of these portions of the specification, it is respectfully submitted that claims 10 and 11 are clear, and it is respectfully requested that the § 112 rejections of claims 10 and 11 be withdrawn.

Claim Rejections – 35 U.S.C. § 103

Claims 1-5, 7, and 12-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burris (U.S. Patent Application No. 2003/0208394) in view of Byrd, “Manage Your Inventory in Excel,” (www.computorcompanion.com). Claims 6, 8-11, and 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Burris, in view of Byrd, further in view of Examiner’s Official Notice. Claim 26 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Burris, in view of Byrd, further in view of Cooksville Tire – For Medium Truck Tires (www.cooksvilletire.com).

In rejecting claim 1, the office action appears to argue that the method of claim 1 recites general business calculations, with the details as to what types of data are being input into the general business calculations being non-functional and, therefore, accorded no patentable weight.

Applicant strongly disagrees with this argument and respectfully submits that the references cited do not include sufficient evidence for a proper § 103 rejection of the amended claims. For example, claim 1 recites calculating a maximum expected number of tires to be sold for each carline per period, where calculating the number involves multiplying an average number of repair order requests per time period by the number of days the service center is open

per time period multiplied by four multiplied by a tire tread index. The office action cites to paragraph [0025] of Burris as teaching the calculating step. Paragraph [0025] of Burris states,

[0025] Due to the flexibility of the system, and the large amount of information entered into it relating to virtually all business aspects of the manufacturer, a wide range of reports is readily available to a user. FIG. 3 lists, in a hierarchical structure, examples of some of the types of reports that can be generated. Forecasting reports can be tailored to predict future sales, production requirements and necessary inventory. Further, the scope of these predictions can be adjusted to varying levels of detail. This allows for predictions relating to a class or range of products, or if greater detail is desired, only to one specific product, component or raw material. Additionally, this prediction data can be further broken down based on qualifiers. Several examples include qualifiers relating to a unit of time, or a specific customer, part, product line or manufacturing plant. Consequently, very specific and detailed forecasts can be now generated, such as an expected amount of raw material required per customer per plant per month.

This paragraph states that a number of different reports may be generated at a number of different levels of detail. There are no details in this portion of Burris detailing a mechanism for calculating these reports at all, let alone a teaching of the detailed calculating step of claim 1. Burris at most says that a future sales report may be calculated.

Furthermore, the examiner admits on page 7 of the office action that Burris fails to disclose that the calculation is for a maximum expected number of tires to be sold for each carline per period. Instead, the examiner relies on Byrd as disclosing calculating maximum sales. It is respectfully submitted that Byrd does not disclose calculating maximum sales. The relevant portion of Byrd states:

In order to figure out your lead time sales and a safety quantity, you first have to *estimate your maximum and average sales*. These figures will let you calculate a sales variation, which is one component of your safety quantity formula. This is where the Sales Forecast section of the worksheet comes in.

Enter the Sales Forecast section title in A9, and the Max Sales label in B10, the Average Sales label in B11, and the Sales Variation label in B12. If you want to include the minus and equal signs on the labels as shown in the example, be sure to start the

label with an apostrophe (') so Excel knows you are entering text, not a formula.

In the Max Sales data cell (C10), *enter the maximum number of items you expect to sell in the coming period*. In the Average Sales data cell (C11), enter the average number of items you expect to sell in the coming period. In the Sales Variance data cell, enter the following formula:
=C10-C11

As you can see, the Sales Variance is the difference between your average expected sales and your maximum expected sales.

The relevant portion of Byrd merely discloses entering an estimate of maximum expected sales in an excel worksheet. Byrd never discusses how to estimate the maximum expected sales at all, let alone teaching detailed steps of calculating maximum sales. Because Burris in combination with Byrd fails to teach or suggest the detailed steps of calculating a maximum expected number of tires to be sold for each carline per period, *where calculating the number involves multiplying an average number of repair order requests per time period by the number of days the service center is open per time period multiplied by four multiplied by a tire tread index*, it is respectfully requested that the § 103 rejection of claim 1 be withdrawn.

It is further submitted that the § 103 rejection of claim 1 should be withdrawn because the cited references fail to teach the very specific tire tread index recited in the calculating a maximum expected number step. The office action attempts to sidestep the requirement of having to cite to a reference teaching or suggesting such an index by stating that the index is non-functional descriptive material that should be afforded no patentable weight. It is respectfully submitted that the tire tread index is clearly not non-functional because it is used in calculating the maximum expected number of tires to be used. The office action fails to cite to a teaching or suggestion of any index at all, let alone a tire tread index, in calculating a maximum expected number of tires to be sold. Because the recited index is clearly functional in that it is a

measurement that is utilized in calculating a maximum expected number of tires, it is respectfully submitted that the office must cite to the use of such an index in a calculation of a maximum expected number of tires to be sold or provide technical reasoning why such a feature is obvious. Because the office action fails to cite to the use of any index at all in discussing this portion of the claim, it is respectfully requested that the § 103 rejection of claim 1 be withdrawn.

Similar features are recited in independent claim 12, and similar portions of the references are cited in referencing the similar features. Thus, it is respectfully requested that the § 103 rejection of claim 12 be withdrawn for similar reasoning as offered for claim 1.

Claims 4, 5, and 14 recite specific ranges that the office action ignores as being non-functional descriptive material. It is respectfully submitted that the office cannot properly ignore recited ranges in this manner. In fact, the MPEP contains several sections specifically devoted to the examination of ranges (*e.g.*, 2131.03 and 2144.05). The recited ranges are no different than other ranges recited in other applications. They are functional limitations, and it is respectfully submitted that these ranges must be considered. Because the cited references fail to deal with tires at all, let alone tire tread indexes in the very specific ranges recited, it is respectfully requested that the § 103 rejections of claims 4, 5, and 14 be withdrawn.

With respect to claim 26, the office cites to Page 1, paragraph 3 of Cooksville as teaching the calculation of the tire tread index for a carline. The cited portion of Cooksville states:

Federal law requires that front axle truck tires on vehicles over 10,000 lbs. gross vehicle weight must have at least 4/32" tread depth. Tread wear indicators are contained in the tread of Bridgestone truck tires and become visible when the tread depth

reaches 2/32" in two adjacent major grooves. Drive and trailer tires should be replaced when the tread depth reaches 2/32" or the wear bars appear since 2/32" is the minimum permissible legal tread depth on all axles except the front.

At most, the cited portion of Cooksville discloses a tread depth threshold. It never discloses a quantity similar to the tire tread index as recited in claim 1, let alone the detailed calculation of the tire tread index. Because the cited references fail to disclose the calculation of the tire tread index for a carline at all, it is respectfully submitted that claim 26 is allowable.

It is noted that the assignee has not presented arguments with respect to certain of the dependent claims in the instant application. This is done without prejudice to the assignee's right to present arguments with respect to each of the claims at any point in the future. Further, because each of the dependent claims in the application depends from a base claim that is itself allowable, the dependent claims are allowable for at least the reasons set forth with respect to the independent claims.

CONCLUSION

For the reasons set forth above, the pending claims of the instant application are allowable. The assignee respectfully requests that the examiner pass this case to issuance.

May 6, 2010

By: MATTHEW W. JOHNSON

Matthew W Johnson
Reg. No. 59,108
JONES DAY
500 Grant Street
Suite 4500
Pittsburgh, PA 15237
(412) 394-9524